

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CHARLES ALPINE	§	
v.	§	CIVIL ACTION NO. 9:07cv130
D. SWEETIN	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Charles Alpine, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Alpine says that there once was free tobacco available to inmates at TDCJ, but now smoking is prohibited there. He asks that inmates once again be allowed access to free tobacco.

After review of the complaint, the Magistrate Judge issued a Report on June 20, 2007, recommending that the lawsuit be dismissed. The Magistrate Judge observed that the possession of tobacco on property used, owned, or controlled by TDCJ is a felony under Texas state law, and so the relief sought by Alpine is prohibited.

More pertinently, the Magistrate Judge stated that Alpine was well known to the Court, having filed at least three lawsuits or appeals which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. Consequently, the Magistrate Judge said, Alpine has “three strikes” under 28 U.S.C. §1915(g), and so in order to proceed, he must either pay the full filing fee of \$350.00 or show that he is in imminent danger of serious bodily injury as of the filing

of the lawsuit. Alpine did neither of these, and so the Magistrate Judge recommended that the lawsuit should be dismissed.

Alpine filed objections to the Magistrate Judge's Report on June 28, 2007. These objections do not address the issue of Alpine's strikes, but say that while the law says that the people "can" prohibit smoking, they do not have to. Alpine also complains that the Magistrate Judge is not a doctor and "is not God," and that under the First Amendment, he has the right of freedom of religion and "the right to live off one's own mind." His objections are without merit.

The Court has conducted a careful *de novo* review of all of the pleadings in this cause, including the Plaintiff's complaint and pleadings, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's motion for leave to proceed *in forma pauperis* is DENIED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of the lawsuit without seeking *in forma pauperis* status and upon payment of the \$350.00 filing fee. Should Alpine pay the full filing fee within 30 days after the entry of final judgment, the lawsuit shall proceed as though the full filing fee had been paid from the outset; however, payment of the full filing fee would not affect a frivolousness analysis, nor would it affect the question of exhaustion of administrative remedies. Finally, it is hereby

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So **ORDERED** and **SIGNED** this **7** day of **July, 2007**.

A handwritten signature in black ink, appearing to read "Ron Clark", is written above a horizontal line.

Ron Clark, United States District Judge